

# TAX LAWS (SECOND AMENDMENT) ORDINANCE 2019

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**The Institute of  
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# HIGHLIGHTS OF AMENDMENTS MADE IN INCOME TAX ORDINANCE, 2001

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## Key Amendments

### Tax Concessions / Exemptions / Facilitation

- ▶ Tax Concessions for Traders
- ▶ Tax Concessions for five sectors
- ▶ Non collection of tax on elec. bills
- ▶ Inter-Corporate Dividend in Group Companies
- ▶ Tax Concessions on disposal of immoveable property
- ▶ Automatic issuance of exemption certificate

### Other Important Amendments

- ▶ Greenfield Industrial Undertaking
- ▶ Investment through Special Convertible Rupee Account
- ▶ Business License Scheme
- ▶ Closure of audit – S. 214E
- ▶ Disclosure of information by public servant
- ▶ Procedure Prescribed for Transfer Pricing Audit



**Tax Concessions / Exemptions / Facilitation**

# Tax Concessions for Traders

## S. 113, CI (28D)-Part II & CI (115) Part IV Second Schedule

Through 2nd Amendment Ordinance, following tax concessions are provided to **individual traders having turnover upto 100m:**

- Rate for minimum tax u/s 113 has been reduced **from 1.5% to 0.5%** for tax year 2020. To qualify for the reduced rate, tax liability for tax years 2019 & 2020 should not be less than the tax liability for tax year 2018 (*i.e. turnover for TY 2020 should be 2.5 times of turnover of TY 2018*).
- Traders having turnover **upto Rs.100 million**, are excluded from the ambit of withholding agents as defined in section 153 (*Previously this limit was Rs. 50m*).

The term “trader” has been defined to mean an individual engaged in business of buying and selling of goods in the **same state**, including a retailer and a wholesaler **but excluding a distributor**.

# Tax Concessions for Five Sectors

## Cl. (45A) Part IV Second Schedule

- The concessionary rate of tax withholding (i.e.1%) for suppliers and service providers under Clause (45A) were available to those who were registered under sales tax upto June 30, 2011. **Through, 2<sup>nd</sup> Amendment Ordinance, the said condition has been removed. Now all the purchases of goods & services by 5 sectors are liable to WHT u/s 153(1)(a) & (b) @ 1%.**
- Before 2nd Amendment Ordinance, traders of yarn were not subject to withholding of tax on their supply of goods & services to the taxpayers falling in 5 sectors. They were liable to pay minimum tax on their turnover on monthly basis @ 0.1%.
- After 2nd Amendment Ordinance, the supply of goods & services by yarn traders to 5 sector taxpayers shall be subject to withholding tax @ **0.5%**. Further, U/C 28E, Part II, for traders of yarn being **individuals**, the reduced rate of minimum tax u/s 113 has been prescribed at **0.5%** for tax year 2020.

# Non applicability of section 235 Cl. (66)

- Cl. (66) provided exemption from collection of tax on electricity bills to the taxpayers falling under the zero rated regime of sales tax and registered as exporters or manufacturer of —
  - Textile and articles thereof;
  - Carpets;
  - Leather and articles thereof including artificial leather footwear;
  - Surgical goods; and
  - Sports goods.
  
- The 2<sup>nd</sup> Amendment Ordinance has **omitted the condition of zero-rating for availing the exemption.**
  
- It has been clarified that manufacturer-cum-exporter of these sectors are eligible for this exemption.

# Inter-Corporate Dividend in Group Companies Cl. (103C)

- Inter corporate dividend is exempt from tax in case of companies eligible for group relief under section 59B of the ITO 2001.
- Before 2<sup>nd</sup> Amendment Ordinance, the aforesaid exemption is **partially available** to the extent of shareholding percentage of parent company in the subsidiary company.
- Through the 2<sup>nd</sup> Amendment Ordinance, partial exemption has been replaced with **100% exemption** to entities entitled to group relief.

# Tax Concessions on disposal of immoveable property

## Cl. (9A)

- Clause (9A) provides for reduction in tax payable on disposal of immovable property by **50%** on 1st sale of immovable property acquired or allotted to ex-servicemen and serving personnel of Armed Forces or ex-employees or serving personnel of Federal and Provincial Governments.
- Through the 2<sup>nd</sup> Amendment Ordinance, the above tax shall be reduced by 75%, if holding period is 3 years or more.



# Automatic issuance of exemption certificate

## Cl. (72B)-Part IV-Second Schedule

- Cl. (72B) prescribe the mechanism for issuance of exemption certificate from collection of tax u/s 148 on payment of tax liability for current year on the basis of determined tax liability of preceding two years, whichever is higher.
- After 2<sup>nd</sup> Amendment Ordinance, the tax liability would be considered discharged if it is paid in the manner prescribed by FBR. **(Rules in this regard would be issued)**
- To facilitate the taxpayers, 2<sup>nd</sup> Amendment Ordinance introduced mechanism to allow **automatic issuance of exemption certificate by IRIS upon expiry of prescribed time**
- Commissioner may modify or cancel this certificate after recording reasons and opportunity of being heard.

A person is shown in silhouette from the back, looking through binoculars. The background is a city skyline at sunset, with the sun low on the horizon, casting a warm orange and yellow glow. The sky is filled with soft, wispy clouds. The city buildings are silhouetted against the bright sky. A yellow banner with black text is overlaid on the lower part of the image.

## **Other Important Amendments**

# Tax Holiday for 'Greenfield Industrial Undertaking'

## S. 2(27A) & Cl. 126(0)

- Profits/gains of a company from a greenfield industrial undertaking incorporated on after July 1, 2019 is exempt from tax for a period of five years [Clause 126(O)]
- The term 'greenfield industrial undertaking' was not previously defined in the Ordinance.
- Through 2<sup>nd</sup> Amendment Ordinance, it has been defined as new industrial undertaking which is:
  - setup on land not previously utilized
  - built without demolishing/revamping etc. any existing structure, facility or plant
  - not formed by splitting-up/reconstruction of an undertaking already in existence or by transfer of P&M or building form an undertaking established in Pakistan and is not part of expansion project
  - **using process / technology that has not earlier been used in Pakistan and approved by Engineering Development Board**
  - is approved by the Commissioner
- The above definition is applicable from July 1, 2019.

# Capital Gain on Investment through Special Convertible Rupee Account (SCRA) - S. 152(1D)

- Through 2<sup>nd</sup> Amendment Ordinance, a tax scheme has been introduced for capital gains of non-resident companies having no PE in Pakistan.
- Every banking company, maintaining SCRA of non-resident investor is required to deduct tax @ 10% from capital gain earned on disposal of debt instrument, government securities, T-bills & Bonds purchased through SCRA.
- The tax so collected will be treated as final tax.
- Non-resident investors who earns only profit on debt and/or capital gain on debt securities / government securities through SCRA would not be required to get registered with FBR. Further, they would also not be required to file the return of income / statement of final taxation.

## Capital Gain on Investment through Special Convertible Rupee Account (SCRA) - S. 152(1D) [cont.]

- Provisions regarding payment of advance tax on capital gains would also not apply on such non-resident investors.
- Exemption, from collection of tax on banking transaction from persons not appearing in ATL (S.236P), is also provided on a SCRA account maintained by non-resident investor.
- To avoid the withholding of tax at double rate, section 152(1D) has also been included in the exception list provided in the 10<sup>th</sup> Schedule.

- Through FA 2019, the concept of business license scheme was introduced, whereby every person engaged in any business, profession or vocation was required to obtain and display a business license
- Through 2<sup>nd</sup> Amendment Ordinance, **following fines** have been prescribed for persons who fail to obtain business license:
  - Rs. 25,000, where the person is deriving income chargeable to tax under the Ordinance; or
  - Rs. 5,000 in any other case
- Commissioner has been empowered to cancel the business license in cases where a person:
  - fails to notify any change in particular

# Closure of Audit – S. 214E

- S.214E provides conditions for conclusion of automatic selection of audits under the omitted S.214D.
- Through the 2nd Amendment Ordinance, FBR has been empowered to prescribe procedure for conclusion of audit.
- The prescribed procedure may include acceptance of declared income of a taxpayer subject to specified conditions.

# Disclosure of Information by Public Servant – S. 216

- S.216 was initially introduced for the purpose of preventing disclosure of information by public servants. It also includes certain exceptions.
- Through 2<sup>nd</sup> Amendment Ordinance, the public servants may disclose information to Financial Monitoring Unit (FMU) for the purposes of performing functions as laid down in the Anti-Money Laundering Act.



# Procedure Prescribed for Transfer Pricing Audit – S.230E

- Transfer pricing audit is to be conducted as per the procedure laid down in section 177 and other provisions of the ITO, 2001. This way, the ambiguity relating to the transfer pricing audit procedure has now been removed.
- Transfer pricing audit initiated would not preclude the Commissioner from determining price at arm's length while conducting audit proceedings under section 177 or 214C or amendment proceedings under section 122.

A grid of 15 lampshades arranged in 3 rows and 5 columns. The central lamp in the second row, third column is illuminated, casting a warm glow. The other lampshades are unlit and appear as dark silhouettes against a black background.

**Sales tax**

# HIGHLIGHTS OF AMENDMENTS MADE IN SALES TAX ACT, 1990

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## Key Amendments

- ▶ **Greenfield Industrial Undertaking-Definition**
- ▶ **Tier-1 Retailer –Definition**
- ▶ **Goods Supplied From Tax-Exempt Areas**
- ▶ **Restriction on Input Tax on Supplies to Unregistered Persons**
- ▶ **Exemptions and Reduced Rate**
- ▶ **Value Addition Tax- 12th Schedule**
- ▶ **Offences and Penalties**

## Greenfield Industry – S. 2(12A)

- An exemption was granted on P&M imported by greenfield industries for the manufacture of taxable goods. (Sr. No. 150, 6th Schedule)
- However, the term “greenfield industry” was not defined. Through 2<sup>nd</sup> Amendment Ordinance it has been defined as same as in Income Tax Ordinance, 2001

## Tier-1 Retailers – S. 2(43A)

- The criteria for classification of Tier-1 Retailers has been modified. A retailer shall be classified as a Tier-1 Retailer, if such a retailer falls **in any one or more** of the following categories:
1. A retailer operating as a unit of a national or international chain of stores;
  2. A retailer operating in an air conditioned shopping mall, plaza, or centre, excluding Kiosks;
  3. A retailer whose cumulative electricity bill during the immediately preceding twelve consecutive months exceeds **PKR 1,200,000 (previously PKR. 600,000)**;
  4. A wholesaler-cum-retailer, engaged in bulk import and supply of consumer goods on whole sale basis to the retailers as well as on retail basis to the general body of the consumers;
  5. A retailer, whose shop measures one thousand square feet in area or more; and
  6. **Any other person or class of persons as prescribed by the Board.**

# Goods Supplied From Tax-Exempt Areas

## S. 40D

- A new section 40D has been introduced, which prescribes the procedure for transporting goods from tax-exempt areas to taxable areas of Pakistan.
- Conveyance shall be accompanied by the prescribed documents.
- RTO's shall establish check posts on routes originating from tax exempt area for examining goods and documents where officers not below Inspectors be appointed by the Commissioner.
- In the absence of prescribed documents or in case of any discrepancy therein, goods alongwith vehicle will be seized.
- Show cause notice will be issued to the owner for imposition of penalty within 15 days.
- The Section also defines the tax exempt areas including Azad Jammu and Kashmir, Gilgit Baltistan and, Tribal areas of Pakistan as defined in Article 246 of the constitution of Islamic Republic of Pakistan and such other areas as may be prescribed.

# Restriction on Input Tax on Supplies to Unregistered Persons

## S. 73(4)

- Through FA 2019, input tax attributable to supplies made to unregistered person has been disallowed for which sales invoices do not bear the NIC/NTN of the recipient (S. 8).
- Through 2nd Amendment Ordinance, it has been provided that if a registered manufacturer will make taxable supplies to a person (who is not registered under the Act ) exceeding **Rs. 10 million** in a month and **Rs. 100 million** in a financial year, then input tax adjustment (as attributable to such excess supplies to the unregistered person) will not be allowed.
- Further, through STGO No. 01/2020, FBR directed that the above provisions shall not apply to supplies made to:
  - Federal/provincial/local government, departments, authorities etc., not engaged in making taxable supplies
  - Foreign Missions, diplomats and privilege person
  - All other persons not engaged in taxable supplies

Moreover, it is clarified that the threshold of 10m/month & 100m/year is applicable on goods supplied to **a single person**

## Exemptions and Reduced Rate

- Exemption on Import/local supply of edible oil and vegetable ghee, including cooking oil, on which FED is charged **shall not be available on local supplies by importer in line with supplies made by distributor, wholesaler or retailer. (Sr. 24, Table I, 6<sup>th</sup> Sch)**
- Meat and frozen, prepared or preserved sausages and similar products of meat, poultry meat or meat offal of all types including poultry meat and fish sold in retail packing under a brand name or a trademark is subject to reduced rate of sales tax at 8%. **These items if sold otherwise than in retail packing under a brand name or a trade mark will remain exempt. (Sr. 68 & 69, Table I, 8<sup>th</sup> Sch)**
- Rate of sales tax on import of raw cotton and ginned cotton has now been increased from 5% to **10%**. (Sr. 5, Table I, 8<sup>th</sup> Schedule)
- The sales tax on import or local supplies and at the time of registration of cellular mobile phones or satellite phones **has been reduced. (Sr. 2, 9<sup>th</sup> Sch)**



# Value Addition Tax- 12<sup>th</sup> Schedule

- Value addition tax at 3% ad valorem **shall not be charged** on P&M in Chapter 84 and 85 of the First Schedule to the Customs Act, 1969, as are imported by manufacturer for in house installation or use
- **The refund of value addition tax on goods used for zero rated supplies shall now be available.**

# Offences and Penalties

## S. 33

- Following penalties have been introduced through 2<sup>nd</sup> Amendment Ordinance

Offences	Penalties
Person, who is integrated with the Board, conducts transactions in a manner to avoid monitoring, tracking, reporting or recording of such transactions or issues an improper invoice or any person who abets commissioning of such offence.	<ul style="list-style-type: none"> <li>➤ Penalty of PKR 500,000 or 200% of the amount of tax involved, whichever is higher.</li> <li>➤ He shall, further be liable to imprisonment for 2 years or fine of PKR 2 million, or with both.</li> <li>➤ Any person who abets commissioning of such offence, shall be liable to imprisonment for 1 year, or fine of PKR 200,000, or with both.</li> </ul>
Person, who is required to integrate with the Board but fails to do so	Penalty of PKR 1 million and if continues to commit the same offence after a period of 6 months after imposition of penalty as aforesaid, his business premises shall be sealed.
Person being a manufacturer/importer of an item subject to tax on retail price and <b><u>fails to print the retail price</u></b>	PKR 10,000 or 5% of the amount of tax involved, whichever is higher:
Person being owner of the goods, which are brought to Pakistan from tax-exempt areas in violation of Section 40D.	PKR 10,000 or 5% of the amount of tax involved, whichever is higher:

Question &  
Answers  
Sessions